

CHAPTER 3 ADMINISTRATIVE PROCEDURES FOR SIDEWALK CAFES

Secs.	
300	Applicability
301	General Requirements
302	Authority to Issue Required Permits
303	Application Procedures for a Sidewalk Cafe Permit
304	Review of Sidewalk Cafe Permit Application
305	Public Space Committee Review of Sidewalk Cafe Permit
306	Certificate of Use
307	Expiration of Sidewalk Cafe Permits
308	Revocation of Sidewalk Cafe Permits
309	[Reserved]
310	General Standards for All Sidewalk Cafes
311	Sidewalk Locational Criteria
312	Physical Criteria for Sidewalk Cafes
313	Life and Fire Safety Standards
314	Sanitation Standards
315	Special Standards for Unenclosed Sidewalk Cafes
316	Special Standards for Enclosed Sidewalk Cafes
317	Procedure for Waiver or Modification of Standards
399	Definitions

300 APPLICABILITY

- 300.1 This chapter shall apply to all sidewalk cafes and shall supplement chapter 2 of this title and the provisions of D.C. Law 4-148, "The Enclosed Sidewalk Cafe Act of 1982," as amended (also referred to in this chapter as "the Act").
- 300.2 A person granted a sidewalk cafe permit before September 16, 1982, shall, by March 16, 1984, satisfy the requirements of the Act, §210 of chapter 2 of this title, and §§102.3, 103.2, 200.2, 200.3, 202.7, 206.2, 206.3, 206.4, 206.12, 207.1, 207.2, and 207.3 of this chapter.
- 300.3 A person granted a Sidewalk Cafe Permit after September 15, 1982, and before August 26, 1983, shall, on or before September 25, 1983, satisfy the requirements of the Act, §210 of chapter 2 of this title, and the subsections of this chapter listed in §300.2.
- 300.4 On or before November 26, 1984, a person granted a Sidewalk Cafe Permit prior to August 26, 1983, shall satisfy the requirements of this chapter that are not listed in §300.2.
- 300.5 No person shall be issued a Sidewalk Cafe Permit after August 26, 1983, unless the proposed sidewalk cafe meets the requirements of this chapter, §210 of chapter 2 of this title, and the Act.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Reorganization Plan No.2 of 1975, 21 DCR 3198; 22 DCR 961, effective July 25, 1975, and §6(c) of the Enclosed Sidewalk Cafe Act of 1982, D.C. Law 4-148, D.C. Code §7-1001 *et seq.* (1995 Repl. Vol.).

SOURCE: Final Rulemaking published at 30 DCR 4346 (August 26, 1983).

EDITOR'S NOTE: The Building Code, the Fire Code, and the Electrical Code referred to in this title have been superseded by D.C. Law 6-216, Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987. The construction regulations existing prior to March 21, 1987, remain in effect for projects having reached specified stages of completion. D.C. Law 6-216 adopted the 1984 National BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes. Effective November 27, 1992 (39 DCR 8665), the 1984 BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes were superseded by the adoption of the 1990 BOCA Codes, and the 1992 D.C. Supplement to the BOCA Codes.

301 GENERAL REQUIREMENTS

- 301.1 No person shall construct or operate a sidewalk cafe except when authorized by the Public Space Committee.
- 301.2 No person shall operate a sidewalk cafe until issued a Sidewalk Cafe Permit and a Certificate of Use, except as otherwise provided in this chapter.
- 301.3 No applicant shall be issued a Sidewalk Cafe Permit unless the adjacent property is zoned for restaurant use or a variance to operate a restaurant has been granted to the adjacent property.
- 301.4 No applicant shall be issued a Sidewalk Cafe Permit unless the applicant saves harmless and indemnifies the District, and its officers, agents, and employees from all suits, claims, charges, and judgments to which the District, its officers, agents, and employees may be subject on account of the issuance of a Sidewalk Cafe Permit, the operation of the sidewalk cafe, or the injury to any person or damage to any property, including the property of the District and the property of the applicant, where the applicant's or the District's property may be damaged or destroyed by the Fire Department or any other agency of the District pursuant to a public emergency or fire.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4347 (August 26, 1983).

302 AUTHORITY TO ISSUE REQUIRED PERMITS

- 302.1 The Director of the Department of Regulatory and Consumer Affairs is authorized to issue a Sidewalk Cafe Permit and a Certificate of Use pursuant to the requirements of this chapter.
- 302.2 A Sidewalk Cafe Permit shall be issued when the following conditions are satisfied:
 - (a) An application to occupy public space has been received by the Director of Regulatory and Consumer Affairs;
 - (b) The application has been reviewed and approved pursuant to this chapter;
 - (c) All applicable fees have been paid; and

(d) All insurance requirements have been approved and fulfilled.

302.3 A Certificate of Use for a sidewalk cafe shall be issued when the following conditions are satisfied:

(a) A Sidewalk Cafe Permit has been issued;

(b) Where applicable, a Building Permit has been issued;

(c) The sidewalk cafe has been inspected and approved pursuant to §306 of this chapter; and

(d) All applicable fees have been paid.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4347 (August 26, 1983).

303 APPLICATION PROCEDURES FOR A SIDEWALK CAFE PERMIT

303.1 In the case of an unenclosed sidewalk cafe, the applicant shall file for a Sidewalk Cafe Permit.

303.2 Pursuant to the provisions of the Act, each applicant for a permit for an enclosed sidewalk cafe shall file for a Sidewalk Cafe Permit and shall file for a Building Permit.

303.3 Each application for a sidewalk cafe shall be signed and approved by the owner of the property abutting the public space to be occupied.

303.4 The application shall be submitted to the Director of Consumer and Regulatory Affairs on the form prescribed for that purpose.

303.5 Upon receipt of a completed application by the Director of Consumer and Regulatory Affairs, the application shall be submitted for review to the appropriate District agencies in accordance with §304.

303.6 The applicant shall give appropriate notice of the application by posting on the proposed sidewalk cafe location a notice that an application for a Sidewalk Cafe Permit has been filed with the Director of Consumer and Regulatory Affairs. The notice shall be posted in the manner set forth in this section.

303.7 Notices shall be posted at each street frontage of the property involved and on the front of the building located on the property. All notices shall be in plain view of the public.

303.8 Notices shall be on paper having a minimum size of eight and one-half inches by eleven inches (8½ in. x 11 in.).

303.9 Each notice shall be approved by the Director of Consumer and Regulatory Affairs.

303.10 Each notice shall include the following information:

- (a) The date of the application;
 - (b) The nature of the application;
 - (c) The name of the applicant;
 - (d) The Advisory Neighborhood Commission within which the property is located;
 - (e) The property involved; and
 - (f) The name and address of the person designated by the Director of Consumer and Regulatory Affairs to receive written comments.
- 303.11 Within five (5) days after the date the application for a Sidewalk Cafe Permit has been filed, each applicant shall file with the Director of Consumer and Regulatory Affairs a sworn affidavit demonstrating compliance with the notice provisions of this section.
- 303.12 Each applicant shall make a reasonable effort to maintain the posted notice by checking the signs at least every five (5) days and by posting new notices as necessary.
- 303.13 Each application shall include the following:
- (a) The location and address of the proposed sidewalk cafe and a description of the boundaries of the surface space proposed to be occupied;
 - (b) A statement of the days and times of the week that the sidewalk cafe will operate, including Saturdays, Sundays, and holidays;
 - (c) A statement of the anticipated periods of use during the year;
 - (d) Fifteen (15) copies of the sidewalk cafe site plan, front and side elevations, appropriate longitudinal and latitudinal sections, and a structural diagram showing the items listed in §303.14;
 - (e) In the case of an enclosed sidewalk cafe, four (4) additional copies of the items required in paragraph (d) of this subsection shall be submitted and the items shall be signed by a structural engineer certified in the District;
 - (f) Three (3) eight inch by ten inch (8 in. x 10 in.) glossy photographs of the surface space showing the following:
 - (1) Frontal view;
 - (2) Sharp angle right side view; and
 - (3) Sharp angle left side view;

- (g) A copy of the required liability insurance as specified by the Director of Consumer and Regulatory Affairs;
- (h) A copy of the current Certificate of Occupancy issued by the Director of Consumer and Regulatory Affairs for the existing, abutting restaurant (if a current Certificate of Occupancy is in existence); and
- (i) A copy of a rental agreement if the surface space is to be used by a person other than the owner of the abutting property.

303.14 The structural diagram required under §303.13(d) shall show the following:

- (a) The width, length, and location of the sidewalk cafe areas in relation to the surface space;
- (b) The location of all tables, chairs, railings, planters, and floor coverings;
- (c) The seating capacity of the sidewalk cafe and the location of exit ways, doors, windows, and aisles;
- (d) The separation between the pedestrian space and the sidewalk cafe space;
- (e) The total width and length of the sidewalk adjacent to the sidewalk cafe and the location of any public improvements within or adjacent to the sidewalk, including, but not limited to, utility poles, fire hydrants, signs, posts, parking meters, bus stops, bus shelters, metrorail station entrances, trees and tree grates, and utility vaults;
- (f) The proposed improvements to the public space, including, but not limited to, mechanical ventilation, electrical installation, new sidewalk, walls, flooring, lighting, landscapings, plantings, railings, or other forms of weather protection. When applicable, this information shall be accompanied by the manufacturer's detailed standards and location schedule;
- (g) The location of the sidewalk cafe in relation to the property line, the street curb(s); and to any other sidewalk cafe or awning located on the block face;
- (h) The location, height, and dimensions of any canopies, awnings or roofs, if any, and whether the canopies or awnings will be in fixed positions or capable of retraction, folding, or otherwise being moved;
- (i) Any object to be affixed or attached to a wall or ceiling of the sidewalk cafe;
- (j) The height and dimensions of any platforms, floors, walls, and dividers;
- (k) All sidewalk cafe construction and structural parts, including the structural adequacy of each;
- (l) The location of any fire escapes, drop ladders, and stairs;

- (m) The grade of the adjacent sidewalk if the topography deviates from the District standard sidewalk grade;
- (n) The location of any fire protection systems, equipment, or appliances; and
- (o) The location of any public utility cut-offs.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4348 (August 26, 1983).

304 REVIEW OF SIDEWALK CAFE PERMIT APPLICATION

- 304.1 Prior to the Public Space Committee review of the application, the application shall be reviewed for compliance with all applicable laws, regulations, rules, and Mayor's orders by the agencies and persons listed in this section.
- 304.2 If the proposed sidewalk cafe is located within the "Shipstead Luce" or "Old Georgetown" areas, the applicant shall comply with the conditions of D.C. Code §§5-410 and 5-1101 *et seq.* (1981), and §219 of chapter 2 of this title.
- 304.3 If the proposed sidewalk cafe is located within a "Historic District," or is attached to a "Historic Landmark" the application shall be referred to the Historic Preservation Review Board in accordance with D.C. Law 2-144, the "Historic Landmark and Historic District Protection Act of 1978."
- 304.4 The Director of Consumer and Regulatory Affairs shall forward copies of the application and the plan to the following agencies for the appropriate review:
 - (a) The Fire Chief, who shall determine whether the proposed sidewalk cafe provides a reasonable degree of safety for life and property from the hazards of fire and explosions in accordance with the D.C. Fire Code and §313;
 - (b) The Police Chief, who shall determine whether the proposed sidewalk cafe will have an effect on the public safety and the policing procedures in the area;
 - (c) The Director, who shall determine whether the proposed sidewalk cafe may create an adverse effect on the pedestrian or vehicular traffic in the area, whether the proposed sidewalk cafe is in compliance with chapter 2 of this title, and whether the proposed sidewalk cafe is in compliance with the provisions of this chapter. The Director shall also approve the design of the proposed sidewalk cafe; and
 - (d) The Director of the Department of Consumer and Regulatory Affairs, who shall determine whether the proposed sidewalk cafe will adversely affect the public health and safety, and whether the proposed sidewalk cafe is in compliance with §314.
- 304.5 The Director of Consumer and Regulatory Affairs shall review and preliminarily approve the necessary building permit and shall determine whether the structural adequacy and safety of the proposed construction, and the framing and materials of the proposed sidewalk cafe are in accordance with the provisions of this chapter

and the applicable provisions of the D.C. Building Code. The Director of Consumer and Regulatory Affairs shall also verify the ownership of the adjacent property and whether the property is zoned for or has been granted a variance for the proposed use.

304.6 The Director shall forward one (1) copy of the plan to the following agencies and persons for their review and comments:

- (a) The affected Advisory Neighborhood Commission;
- (b) The public utility companies that operate or maintain equipment or service in the area beneath the proposed sidewalk cafe;
- (c) The owner or occupants of the adjacent property; and
- (d) The Office of Planning, which shall determine whether the proposed sidewalk cafe is in compliance with District planning and urban design objectives.

304.7 The persons, groups, and agencies listed in §304.6 shall forward their comments to the Director within thirty (30) days of receipt of the plan and application. Failure to provide comments within the thirty-day (30) period shall result in the Director assuming that the non-responding agency or the non-responding person has no objections to the proposed sidewalk cafe.

304.8 Except for the Director, the agencies listed in §304.4 shall forward their comments to the Director of Consumer and Regulatory Affairs within thirty (30) days of receipt of the plan and application. Failure to provide comments within the thirty-day (30) period shall result in the Director of Consumer and Regulatory Affairs assuming that the non-responding agency has no objections to the proposed sidewalk cafe. The Director of Consumer and Regulatory Affairs shall complete his or her review within the thirty-day (30) period.

304.9 The Director shall forward his or her comments, including a recommendation and the comments received pursuant to §304.6, to the Director of Consumer and Regulatory Affairs within forty-five (45) days of receipt of the plan and application.

304.10 If a District agency or a utility company has objections or conditions that have not been resolved by the applicant prior to the end of the forty-five day (45) review period, the application and the plan shall be returned to the applicant for resolution of the objections or conditions.

304.11 When applicable, the applicant shall forward a revised plan and application to the Director of Consumer and Regulatory Affairs pursuant to §303.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4351 (August 26, 1983).

305 PUBLIC SPACE COMMITTEE REVIEW OF SIDEWALK CAFE PERMIT

- 305.1 Within five (5) days of the satisfaction of the requirements of §304, the Director of Consumer and Regulatory Affairs shall forward the application, the plan, and all received comments to the Chairperson of the Public Space Committee.
- 305.2 The Chairperson shall prepare a recommendation on the application and the plan for the Public Space Committee's review and consideration.
- 305.3 The Chairperson shall place the application on the agenda of the Public Space Committee and shall notify the applicant of the time and place of the meeting.
- 305.4 The Chairperson shall inform the Advisory Neighborhood Commission or the adjacent property owner or occupant at least twenty-four (24) hours prior to the Public Space Committee meeting where the application is to be considered; Provided, that the Advisory Neighborhood Commission or the adjacent property owner has previously objected to the application pursuant to §304.7.
- 305.5 The Public Space Committee shall determine the following:
- (a) Whether the proposed sidewalk cafe adversely affects the public's need for the use of the public space where the sidewalk cafe is proposed to be located;
 - (b) Whether the proposed sidewalk cafe will provide an economic benefit to the District;
 - (c) Whether the proposed sidewalk cafe will promote the public use and enjoyment of public space;
 - (d) Whether the design and location of the proposed sidewalk cafe is compatible with the other structures and uses in the surrounding area and conforms to the planning objectives for the area; and
 - (e) Whether the proposed sidewalk cafe complies with District laws, rules, and regulations.
- 305.6 The decision of the Public Space Committee shall be submitted to the Director of Consumer and Regulatory Affairs within seven (7) days from the date of the meeting when the application was considered.
- 305.7 If the application is denied, the Director of Consumer and Regulatory Affairs shall return the application and plan to the applicant.
- 305.8 If the application is approved, and when the fees listed in §305.9 have been paid, the Director of Consumer and Regulatory Affairs shall issue the following:
- (a) For an application for an unenclosed sidewalk cafe, a Sidewalk Cafe Permit; or
 - (b) For an application for an enclosed sidewalk cafe, a Sidewalk Cafe Permit and a Building Permit.

305.9 The appropriate fees, pursuant to §305.8, shall be paid by check or money order, payable to the "D.C. Treasurer."

SOURCE: Final Rulemaking published at 30 DCR 4346, 4352 (August 26, 1983).

306 CERTIFICATE OF USE

306.1 Except as provided in §306.2, within six (6) months of the issuance of a Sidewalk Cafe Permit, the applicant shall apply to the Director of Consumer and Regulatory Affairs for a Certificate of Use.

306.2 A person granted a sidewalk cafe permit prior to the effective date of these rules shall apply, within fifteen (15) months of the effective date of these rules, to the Director of Consumer and Regulatory Affairs for a Certificate of Use.

306.3 An applicant may request that the Director of Consumer and Regulatory Affairs and the Director approve a delay in the application for a Certificate of Use. The request shall be in writing and shall provide sufficient reasons for the delay.

306.4 Upon the recommendation of the Director, the Director of Consumer and Regulatory Affairs may approve any justifiable delay in the issuance of a Certificate of Use. This delay shall not exceed three (3) months.

306.5 The Director of Consumer and Regulatory Affairs shall issue a Certificate of Use when the following conditions have been satisfied:

- (a) The sidewalk cafe has been inspected and the issuance of a Certificate of Use has been approved by the Director and the Director of Consumer and Regulatory Affairs;
- (b) The sidewalk cafe complies with the requirements of this chapter, with the terms and conditions of the Sidewalk Cafe Permit and, where applicable, the Building Permit;
- (c) The sidewalk cafe has been inspected by the Fire Chief to ensure that it complies with §313, §§316.10 and 316.11, and with any variance or waiver granted pursuant to §318; and
- (d) All applicable fees, including, but not limited to, all present and past sidewalk cafe rental fees have been paid.

306.6 If the sidewalk cafe does not comply with the requirements of §306.5, the request for a Certificate of Use shall be denied.

306.7 Where applicable, the applicant shall be informed by the Director of Consumer and Regulatory Affairs of the reasons why the Certificate of Use has been denied.

306.8 The applicant shall have sixty (60) days to correct any deficiencies and to reapply for a Certificate of Use pursuant to §306.1.

- 306.9 A Certificate of Use shall be valid for twelve (12) months and shall be renewed annually on the date specified on the certificate.
- 306.10 An applicant shall apply for a renewal of the Certificate of Use in accordance with §306.5.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4354 (August 26, 1983).

307 EXPIRATION OF SIDEWALK CAFE PERMITS

- 307.1 A Sidewalk Cafe Permit shall automatically expire if the construction of the proposed cafe is not commenced within ninety (90) days from the date of the issuance of the Sidewalk Cafe Permit.
- 307.2 An applicant may request that the Director of Consumer and Regulatory Affairs and the Director approve a delay in the construction of the sidewalk cafe. The request shall be in writing and shall provide sufficient reasons for the delay.
- 307.3 Upon recommendation of the Director, the Director of Consumer and Regulatory Affairs may approve any justifiable delay in the progress of the construction of a sidewalk cafe. The delay shall not exceed three (3) months.
- 307.4 If the construction is commenced within the prescribed period, but is not completed within six (6) months from the date the Sidewalk Cafe Permit was issued, the Director may recommend to the Director of Consumer and Regulatory Affairs that the Building Permit be revoked due to a lack of construction activities.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4355 (August 26, 1983).

308 REVOCATION OF SIDEWALK CAFE PERMITS

- 308.1 A Sidewalk Cafe Permit and a Certificate of Use may and can be revoked at any time by the Director of Consumer and Regulatory Affairs upon the request of the Public Space Committee or the Director, for any one (1) of the following reasons:
- (a) There is a public need for the use of the surface space;
 - (b) The applicant has failed to comply with the provisions of this subtitle;
 - (c) The applicant has failed to make use of the surface space for a period of more than twelve (12) consecutive months after the Sidewalk Cafe Permit has been issued;
 - (d) The applicant has failed to comply with the terms or conditions of the Sidewalk Cafe Permit or the Certificate of Use;
 - (e) The applicant has failed to comply with the provisions of this chapter or the provisions of the Act;

- (f) The applicant has failed to complete the construction of the sidewalk cafe within six (6) months; or
 - (g) The applicant has failed to pay any and all applicable fees, including but not limited to, all present and past sidewalk cafe rental fees.
- 308.2 The applicant may, within five (5) days of receipt of the notice of revocation, request a hearing. The hearing shall be conducted pursuant to the D.C. Administrative Procedure Act, approved October 21, 1968 (82 *Stat.* 1208, D.C. Code §1-1501 *et seq.* (1981)), as amended.
- 308.3 The applicant shall remove any property placed upon the public space within twenty four (24) hours following the expiration of the five-day (5) period specified in §308.2, or on the date determined by the hearing examiner pursuant to the procedure set forth in §308.2.
- 308.4 A person shall not operate a sidewalk cafe subsequent to the revocation of a Sidewalk Cafe Permit, unless a new Sidewalk Cafe Permit and a new Certificate of Use has been issued pursuant to this chapter.
- 308.5 If a Sidewalk Cafe Permit has been revoked pursuant to §308.1(f), the Director of Consumer and Regulatory Affairs, upon the recommendation of the Director, may reissue the Building Permit and the Sidewalk Cafe Permit when the applicant certifies that the construction will comply with the provisions of the initial Building Permit and the initial Sidewalk Cafe Permit, and that the construction will be pursued on a timely basis.
- 308.6 Except as provided for in §308.2, the Director of Consumer and Regulatory Affairs shall restore and reissue a Sidewalk Cafe Permit and a Certificate of Use upon the approval of the Director and when the conditions that caused the revocation to be issued have been corrected.
- 308.7 Any costs incurred by the Department, the Department of Consumer and Regulatory Affairs, and any other District agency, as determined by the Director and the Director of Consumer and Regulatory Affairs, in connection with the revocation and the issuance of a new Sidewalk Cafe Permit and a new Certificate of Use, shall be paid by the applicant before the Sidewalk Cafe Permit and the Certificate of Use are restored.
- 308.8 The applicant shall have no recourse against either the United States, the District, or any employee, officer, or agent of the United States or the District, for any loss or damage caused by the revocation of the Sidewalk Cafe Permit or the Certificate of Use.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4355 (August 26, 1983).

310 GENERAL STANDARDS FOR ALL SIDEWALK CAFES

- 310.1 All sidewalk cafes shall be classified as a Group F2 Assembly as defined in §202.7 of the D.C. Building Code, and shall comply with all applicable requirements of §202.7 of the D.C. Building Code.
- 310.2 All electrical appliances and fixtures in a sidewalk cafe shall comply with chapter 1 of the D.C. Electrical Code (Articles 110-50, 410, and 430).
- 310.3 Installation of mechanical equipment and plumbing fixtures outside of the property line in a sidewalk cafe shall not be permitted.
- 310.4 No alcoholic beverages shall be served in a sidewalk cafe unless the appropriate ABC license is obtained and displayed.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4356 (August 26, 1983).

311 SIDEWALK LOCATIONAL CRITERIA

- 311.1 The clear sidewalk space shall be measured from the farthest extended portion of the sidewalk cafe frontage to the curb line or the nearest obstruction, whichever is nearest to the sidewalk cafe.
- 311.2 Recesses in the sidewalk cafe frontage shall not be used to satisfy the clear sidewalk space requirements.
- 311.3 The clear sidewalk space shall be measured as parallel to the curb line between the sidewalk cafe and any obstruction, and in line with normal pedestrian traffic.
- 311.4 For the purpose of determining clear sidewalk space, the space between a tree and the building line shall be considered unobstructed if the treebox is protected by a tree grate that is flush with the grade of the sidewalk.
- 311.5 For the purpose of determining clear sidewalk space, trees, streetlight poles, sign poles, fire hydrants, and other objects located on the surface space shall be considered as obstructions.
- 311.6 Sidewalk cafes located at street intersections shall provide corner clearance by providing a ten foot (10 ft.) clear space radial to the corner.
- 311.7 No sidewalk cafes shall be within fifteen feet (15 ft.) of a bus stop, a bus shelter, or a Metrorail station entrance.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4357 (August 26, 1983).

312 PHYSICAL CRITERIA FOR SIDEWALK CAFES

- 312.1 No portion of a sidewalk cafe, including, but not limited to, doors, windows, walls, or any other objects designed as part of a sidewalk cafe or placed within a

sidewalk cafe, shall swing or project beyond the designated exterior perimeter of the sidewalk cafe; Provided, that this provision shall not apply to fire exit doors which are used exclusively as emergency fire exit doors.

- 312.2 All furnishings of the sidewalk cafe including, but not limited to, tables, chairs, and decorative accessories, shall be readily moveable.
- 312.3 The fixtures of a sidewalk cafe shall not be bolted or permanently affixed to public space, except that screw sockets may be permitted as a form of anchoring when approved by the Public Space Committee.
- 312.4 Any object to be affixed or attached to a wall or ceiling of a sidewalk shall be shown on the plan and approved by the Public Space Committee.
- 312.5 The floor of a sidewalk cafe shall be at the same elevation as the existing surface space, except as provided in §312.6.
- 312.6 In order for the floor of the sidewalk cafe to be at level grade, the floor of the sidewalk cafe may be constructed so as not to exceed eighteen inches (18 in.) above the sidewalk where the sidewalk cafe meets with the adjoining clear sidewalk space.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4358 (August 26, 1983).

313 LIFE AND FIRE SAFETY STANDARDS

- 313.1 When a sidewalk cafe or the adjacent restaurant is occupied, no exit door shall be locked, bolted, or otherwise fastened or obstructed so that the door is unable to be opened from the inside.
- 313.2 Chairs and tables shall be arranged so as to provide for ready access by aisles to each exit doorway. All aisles shall conform to §610 of the D.C. Building Code.
- 313.3 No part of any aisle shall be used in any way that will obstruct its use as an exit or that will constitute a hazardous condition.
- 313.4 All fire protection equipment shall be kept in working condition. Extinguishers, hoses, and other fire protection appliances required by the Fire Chief shall be visible and convenient at all times.
- 313.5 All exits in an enclosed sidewalk cafe shall be marked and lighted in accordance with the D.C. Building Code and the D.C. Electrical Code.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4358 (August 26, 1983).

314 SANITATION STANDARDS

- 314.1 If food service is to be provided within a sidewalk cafe, the provisions of this section shall be followed.

- 314.2 A waiter, waitress, or an attendant shall be assigned to the sidewalk cafe for maintenance purposes at all times the sidewalk cafe is occupied by patrons.
- 314.3 Food preparation or storage shall not be located within the sidewalk cafe area.
- 314.4 All water pitchers, coffee pots and urns, utensils, condiments, containers, and other similar objects within a sidewalk cafe shall be protected from contamination.
- 314.5 Sugar, salt, and other condiments shall be packaged or maintained in a covered container.
- 314.6 Pre-setting of tables in a sidewalk cafe shall not be permitted unless the silverware is protected from contamination.
- 314.7 Outdoor seating shall be counted in satisfying restroom requirements, including, but not limited to, quantity, access, and location.
- 314.8 All access to a sidewalk cafe from the restaurant shall be provided with doors, screening, or other similar objects.
- 314.9 Trash and refuse storage shall not be located in the vicinity of a sidewalk cafe.
- 314.10 A structure or enclosure to accommodate the storage of garbage shall not be erected, maintained, or placed adjacent to a sidewalk cafe.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4359 (August 26, 1983).

315 SPECIAL STANDARDS FOR UNENCLOSED SIDEWALK CAFES

- 315.1 Unenclosed sidewalk cafes shall comply with the provisions of this section and §§310, 311, 312, 313, and 314, chapter 2 of this title, the Act, and all other applicable District laws and regulations.
- 315.2 The awning, canopy, or umbrellas of an unenclosed sidewalk cafe shall be adequately secured, retractable, or removable. Framing shall be made or constructed of incombustible or fire-resistant materials. The material used to cover the framing shall be flame-retardant and shall be approved by the Fire Chief.
- 315.3 The height of the awning of an unenclosed sidewalk cafe shall not be lower than eight feet (8 ft.) from the floor of the sidewalk cafe.
- 315.4 The valance of the awning shall not exceed twelve feet (12 ft.) and shall not exceed a horizontal plane extending from the first floor ceiling of the adjoining building, whichever is less.
- 315.5 The height of a railing, fence, or planter (including vegetation) shall not be higher than thirty-six inches (36 in.).

- 315.6 Artificial turf, carpet, platforms, or any other surface cover shall be allowed on the floor area only when specifically approved by the Fire Chief and the Public Space Committee.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4360 (August 26, 1983).

316 SPECIAL STANDARDS FOR ENCLOSED SIDEWALK CAFES

- 316.1 Enclosed sidewalk cafes shall comply with the provisions of this section and §§311, 312, 313, 314, and 317, chapter 2 of this title, the Act, and all other applicable District laws, rules, and regulations.
- 316.2 Walls and other materials of an enclosed sidewalk cafe shall be of incombustible or fire-resistant materials. Awnings or canopies shall be flame-retardant.
- 316.3 Plastic materials used for any part of an enclosed sidewalk cafe shall have a Class "C" finished rating as defined in §901.5 of the D.C. Building Code.
- 316.4 Interior finishing materials for any part of an enclosed sidewalk cafe shall comply with the D.C. Building Code.
- 316.5 The flooring of an enclosed sidewalk cafe shall be fire-resistant.
- 316.6 The supporting structure of any enclosed cafe shall be constructed in a manner that will support a thirty pounds per square foot (30 lbs./ft.²) live load.
- 316.7 When the combined occupancies of the enclosed sidewalk cafe and the adjacent restaurant exceed seventy-five (75) persons, two (2) exits shall be provided from the enclosed sidewalk cafe, one (1) of which shall open directly from the sidewalk, public alley, or public space abutting the enclosed sidewalk cafe, and one (1) of which may open into the abutting restaurant.
- 316.8 If two (2) means of egress are required for the adjacent business property, two (2) means of egress shall be required for the enclosed sidewalk cafe. If one (1) of the exits is in the center of the enclosed sidewalk cafe and serves the interior of the restaurant, the required aisle width may be increased to a width approved by the Fire Chief and the Director of Consumer and Regulatory Affairs.
- 316.9 No enclosed sidewalk cafe shall project more than twenty feet (20 ft.) from the building line or occupy more than sixty percent (60%) of the available surface space; Provided, that a clear sidewalk space of ten feet (10 ft.) is provided in the surface space fronting the enclosed sidewalk cafe.
- 316.10 When required to be unenclosed, the enclosed sidewalk cafe shall be operated with all of its windows opened and so that the enclosed sidewalk cafe shall not be enclosed from the thirty-six inch (36 in.) base to eight feet (8 ft.) above the sidewalk; Provided, that structural members that are wider or bigger than ten inches (10 in.) shall not be permitted.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4360 (August 26, 1983).

317 PROCEDURE FOR WAIVER OR MODIFICATION OF STANDARDS

- 317.1 Pursuant to the provisions of this section, and except as required pursuant to §317.2, the Public Space Committee, in its discretion, may waive or modify any provision of §§310.4, 312.1(d), 312.2, 312.3, 312.4, 312.5, 312.6, 312.7, and 316.6, and 311 and 314 if the waiver or modification does not pose or present any hazard or danger to the public safety, health, or welfare.
- 317.2 Pursuant to the requirements of this section, the applicant for an enclosed sidewalk cafe may request that the Public Space Committee waive or modify any provision of §210 of chapter 2 of this title or any provision of §§303.2, 310.2, 310.3, 312.7, 316.2, 316.3, 316.4, 316.12, or 316.10 of this chapter when the following conditions are satisfied:
- (a) The public good or the purpose of this chapter and of the Act are not substantially harmed;
 - (b) The waiver or modification has been reviewed pursuant to the provisions of §304 of this chapter;
 - (c) The waiver or modification enhances the design of the sidewalk cafe, the general character of the street and the neighborhood, and the overall planning objectives for the area where the sidewalk cafe is located;
 - (d) The waiver or modification does not interfere with the design, visibility, or operations of the adjacent buildings or space, or the interest of the general public in the adjacent buildings or space;
 - (e) The waiver or modification does not cause an adverse impact on pedestrian or vehicular traffic;
 - (f) The primary objective of the waiver or modification is not to occupy additional public space or to increase the seating capacity of the sidewalk cafe; or
 - (g) The strict application of the provision requested to be waived would result in exceptional practical difficulty due to the shape, topography, or other conditions of a particular property, or would result in undue hardship.
- 317.3 The Public Space Committee shall consider and decide whether to grant or deny the request for a waiver or modification pursuant to §317.2 after a hearing conducted pursuant to §109 of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208, D.C. Code §1-1509 (1981)), and pursuant to the rules and procedures of chapter 10 of Title 18 DCMR.
- 317.4 The applicant shall post a notice of the Public Space Committee hearing date, time, and location at least fifteen (15) days prior to the hearing.
- 317.5 The notice required under §317.4 shall be posted according to the provisions of §303.4 of this chapter.

- 317.6 The request for a waiver or modification shall be filed with the Director of Consumer and Regulatory Affairs, and shall be considered by the persons and the District agencies pursuant to the time frames and provisions of this chapter, except that the Director of Consumer and Regulatory Affairs may waive, when appropriate, any provision of §303 of this chapter.
- 317.7 The request for a waiver or modification shall be in writing and shall state the reason why the waiver or modification is requested.
- 317.8 When possible, an applicant shall request waiver or modification of the original application filed with the Director of Consumer and Regulatory Affairs.
- 317.9 If a Sidewalk Cafe Permit was issued prior to August 26, 1983, the applicant shall request the waiver or modification on or before March 16, 1984, and pursuant to §317.2.
- 317.10 If a Sidewalk Cafe Permit was issued prior to August 26, 1983, the applicant shall request the waiver or modification on or before November 26, 1984, and pursuant to §317.1.
- 317.11 A request for a waiver or modification shall not operate as a stay on the requirements of the Act or this chapter.
- 317.12 At least fifteen (15) days prior to the hearing, the Public Space Committee shall notify the affected Advisory Neighborhood Commission, the adjacent property owners or occupants, and any other person who has submitted a written letter of support of or opposition to the proposed sidewalk cafe or to the waiver or modification.
- 317.13 The Department may intervene in any hearing conducted pursuant to this section, or may recommend to the Public Space Committee whether the request for a waiver or modification shall be granted.
- 317.14 The Public Space Committee shall issue a decision on a request for a waiver or modification within four (4) months of date the request for waiver or modification was filed with the Director of Consumer and Regulatory Affairs.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4363 (August 26, 1983).

399 DEFINITIONS

- 399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed, unless the text or context of the particular section, subsection, or paragraph provides otherwise:

Act - D.C. Law 4-148, the "Enclosed Sidewalk Cafe Act of 1982," effective September 16, 1982, as amended.

Alter or alteration - a change in the design or configuration of either the exterior or interior of a sidewalk cafe or its site; including, but not limited to, railings, walls, roof, awning, sign, or flooring.

Applicant - a person who is applying for or who has obtained a permit.

Awning or canopy - a temporary roof-like structure over a sidewalk cafe attached to, supported from, or contiguous to a restaurant.

Building Permit - a permit issued by the Director of Consumer and Regulatory Affairs for the construction, reconstruction, or alteration of an enclosed sidewalk cafe.

Certificate of Use - a one (1) year renewable certificate, issued upon the recommendation of the Director by the Director of Consumer and Regulatory Affairs, authorizing the use of public space for the purpose of operating a sidewalk cafe.

Chairperson - the Chairperson of the Public Space Committee.

Clear sidewalk space - the area within a sidewalk that is free from any obstruction and retained solely for the flow, passage, and circulation of pedestrians.

Combustible materials - any material made of or surfaced with wood, canvas, compressed paper, or other material that will ignite and burn. Material shall be considered as combustible even though flame-proofed, fire-retardant treated, or plastered. A material that does not meet the requirements of ASTM E136 shall be classified as a combustible material

D.C. Building Code - Title 12 of the *District of Columbia Municipal Regulations*, "Building Code," as amended.

D.C. Electrical Code - Title 5B-2 of the *District of Columbia Rules and Regulations*, "1977 D.C. Electrical Code," as amended.

D.C. Fire Code - Title 25 of the *District of Columbia Municipal Regulations*.

D.C. Police Regulations - the "*District of Columbia Police Regulations*," as amended.

D.C. Vehicles and Traffic Regulations - Title 18 of the *District of Columbia Municipal Regulations*, "*Vehicles and Traffic*," as amended.

Department - the District of Columbia Department of Public Works. [D.C. Law 8-31]

Design - the exterior features of a sidewalk cafe, including, but not limited to, height, depth, width, appearance, texture, color, dimensions, and nature of materials and signing; and the interior features, including, but not limited to, the table layout, the flooring, the lighting, and the width and the location of aisles and doorways.

Director - the Director of the Department of Public Works, or his or her designated agent.

Director, DCRA - the Director of the Department of Consumer and Regulatory Affairs, or his or her designated agent.

District - The District of Columbia.

Enclosed sidewalk cafe - any authorized enclosure of public space as a temporary structure adjacent to a restaurant which consists of no more than one (1) story constructed primarily of light, incombustible, or fire-resistant materials, which does not restrict egress from the properties abutting the restaurant adjacent to the sidewalk cafe, and which is able to be removed within a twenty-four (24) hour period.

Fee - the fee for a Sidewalk Cafe Permit, a Building Permit, a Certificate of Use, or the public space rental.

Fire Chief - the Fire Chief of the District of Columbia, or the Fire Chief's designated agent.

Fire-resistant materials - any material that is flame-proof or fire-retardant, pursuant to the applicable law, rule, or regulation.

Incombustible materials - materials meeting the requirements of ASTM E136-73.

Obstruction - Any physical object, item, material, or structure.

Owner - the holder of the legal title to real property as recorded in the Office of the Recorder of Deeds in the Department of Finance and Revenues of the District of Columbia.

Police Chief - the Police Chief of the District of Columbia Metropolitan Police Department, or the Police Chief's designated agent.

Public space - all the publicly owned property between the property lines on a street.

Public Space Committee - the committee established for the purpose of making final determinations in cases involving the use of public space as specified by Mayor's Order No. 77-150, as amended.

Sidewalk - the portion of surface space located between the curb line and the building line intended for the use of pedestrians.

Sidewalk cafe - an enclosed sidewalk cafe or an unenclosed sidewalk cafe.

Sidewalk Cafe Permit - a revocable permit, issued by the Director of Consumer and Regulatory Affairs upon the recommendation of the Public Space Committee and pursuant to the provisions of this chapter and chapter 2 of this title (Article 43 of D.C. Police Regulations), authorizing the use and occupation of public space in the District of Columbia.

Surface space - all space between the building line and the curb, regardless of whether the space is paved or unpaved.

Unenclosed sidewalk cafe - any authorized use of public space adjacent to a restaurant that contains tables, chairs, railing, or planters which is open to the sky and at the sides, but may include awnings or umbrellas, and which is able to be removed within a twenty-four (24) hour period.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4363 (August 26, 1983); as amended by §4 of the D.C. Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

